

1 LOUIS R. MILLER (State Bar No. 54141)
smiller@millerbarondess.com
2 MIRA HASHMALL (State Bar No. 216842)
mhashmall@millerbarondess.com
3 EMILY A. SANCHIRICO (State Bar No. 311294)
esanchirico@millerbarondess.com
4 MILLER BARONDESS, LLP
1999 Avenue of the Stars, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 552-4400
6 Facsimile: (310) 552-8400

7 Attorneys for Petitioner/Plaintiff
COUNTY OF LOS ANGELES
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

12 COUNTY OF LOS ANGELES,

13 Petitioner/Plaintiff,

14 v.

15 ALEX VILLANUEVA, Sheriff of Los Angeles
County Sheriff's Department; CAREN CARL
16 MANDOYAN, an individual; LOS ANGELES
COUNTY SHERIFF'S DEPARTMENT; and
17 DOES 1 through 10, inclusive,

18 Respondents/Defendants.
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CASE NO. 19STCP00630

**PETITIONER/PLAINTIFF COUNTY OF
LOS ANGELES' SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Filed Concurrently with Declarations of Lisa
Garrett and Louis R. Miller; and [Proposed]
Order

Date: August 16, 2019
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1 **I. INTRODUCTION**

2 It is rare for the County of Los Angeles (“County”) to find itself in a dispute with the head
3 of one of its own departments. It is also rare for the head of a County department to insist on
4 taking a position that is contrary to law. But the County now finds itself in that exact situation:
5 Sheriff Alex Villanueva (“Villanueva”) has “reinstated” a former Deputy Sheriff who was
6 discharged for domestic abuse, breaking and entering, stalking, and then lying about it.

7 The relief the County seeks is straightforward. Caren Carl Mandoyan (“Mandoyan”) has
8 been terminated and is no longer a County employee. The County is asking the Court to uphold
9 the termination and order Villanueva to collect the County’s property—Mandoyan’s weapon,
10 badge, uniform, etc. The County is entitled to this relief:

11 *First*, the County is likely to prevail on the merits. The “settlement agreement” Villanueva
12 used to reinstate Mandoyan is void because it was not approved by County Counsel or the Board
13 of Supervisors. The law is explicit: County Counsel is vested with “*exclusive charge and control*
14 *of all civil actions and proceedings in which the County or any officer thereof, is concerned or is a*
15 *party.*” Los Angeles County Charter art. VI, § 21 (emphasis added) (footnotes omitted).
16 Accordingly, any settlement agreement that purports to settle litigation on behalf of the County,
17 but which is not authorized by County Counsel or the Board of Supervisors, is void.

18 Mandoyan’s reinstatement is also void because it violates the Civil Service Rules. The
19 Civil Service Rules, which were established in accordance with the California Constitution and the
20 Los Angeles County Charter, have the force and effect of law. Mandoyan was discharged in 2016
21 after the County (and Mandoyan) followed each step dictated by the Civil Service Rules:

- 22 ■ First, the Department’s Internal Affairs Bureau (“IAB”) conducted an extensive
23 investigation.
- 24 ■ Second, Mandoyan was offered the opportunity to respond at a *Skelly* hearing.
- 25 ■ Third, Mandoyan appealed his discharge to the Civil Service Commission and
26 requested a hearing.
- 27 ■ Fourth, a Hearing Officer held a five-day hearing, heard testimony, and considered the
28 evidence.
- Fifth, the Hearing Officer issued findings of fact, conclusions of law, and a
recommendation that the Civil Service Commission uphold the discharge.

- Sixth, Mandoyan filed objections to the Hearing Officer’s recommended decision and argued them before the Civil Service Commission.
- Seventh, the Civil Service Commission overruled Mandoyan’s objections, affirmed the Hearing Officer’s recommendation, and issued a final decision upholding Mandoyan’s termination from the Department.
- Eighth, Mandoyan exercised his right to file a writ with the Superior Court.

By law, review by way of writ is the *only* way to reopen a final decision from the Civil Service Commission. Villanueva cannot unilaterally unwind the decision to uphold Mandoyan’s termination, whether through his “Truth and Reconciliation Panel” or otherwise.

Mandoyan cannot be “reinstated” with back pay—he does not meet the conditions set forth in Civil Service Rule 17. Nor can he be “rehired”—he was not on an eligible Civil Service list and did not meet the standards required by both the Civil Service Rules and the Department’s own hiring guidelines. There is, therefore, no basis for Mandoyan to be a Deputy Sheriff.

Second, the County will suffer irreparable harm if Mandoyan continues to purport to work for the Department—complete with uniform, badge and weapon. Anything Mandoyan does while acting under color of law exposes the County to liability, undermines the Department’s reputation, and threatens County operations.

The County respectfully requests that the Court issue a preliminary injunction requiring that: (1) Mandoyan cease to hold himself out as a Deputy Sheriff; (2) Mandoyan relinquish all County property in his possession, including his Department-issued uniform, badge and weapon; and (3) Villanueva and the Department cease to recognize or hold Mandoyan out as a Deputy Sheriff or a County employee.

II. FACTS

A. The Department Terminates Mandoyan

Mandoyan worked for the Department as a Deputy Sheriff at the South Los Angeles Station. (Request for Judicial Notice¹ (“RJN”) Ex. 6 ¶ 1.) In July 2015, a female Deputy Sheriff

¹ Unless otherwise noted, this supplemental brief cites to declarations and exhibits filed concurrently with the County’s original *ex parte* application and opposition filings.

1 came forward with serious allegations against Mandoyan. (Declaration of Lupe Castellanos
2 (“Castellanos Decl.”) Ex. A at pp. 4–5.) The charges against him included domestic abuse,
3 physical assault, stalking, breaking and entering and harassment. (*Id.*) The Department directed
4 IAB to launch a formal investigation. (*Id.* at pp. 2–18.)

5 On August 15, 2016, the Department notified Mandoyan (who had been relieved of his
6 duties while the investigation was pending) of its intent to discharge him. (RJN Ex. 5 ¶ 7.)
7 Mandoyan was offered the opportunity to respond to the Department’s notice of discharge at a
8 *Skelly* hearing on September 6, 2016. (*Id.*)

9 On September 14, 2016, the Department notified Mandoyan that it was formally
10 discharging him. (*Id.*) Mandoyan appealed his discharge to the Civil Service Commission. (*Id.*
11 ¶ 9.) A Hearing Officer conducted a five-day evidentiary hearing on dates between July 2017 and
12 September 2018. (*Id.* ¶ 10.) The Hearing Officer heard testimony and considered the evidence.
13 (*See id.* Ex. 6, ¶¶ 4–9; *see also* Castellanos Decl. Ex. A at p. 1.)

14 On January 4, 2018, the Hearing Officer recommended that the Civil Service Commission
15 uphold the Department’s termination of Mandoyan. (RJN Ex. 5, ¶ 11.) On May 16, 2018,
16 Mandoyan argued his objections before the Civil Service Commission. (*Id.* ¶ 12.) The Civil
17 Service Commission overruled Mandoyan’s objection, affirmed the Hearing Officer’s findings
18 and, on May 23, 2018, issued its Final Commission Action. (*Id.* ¶ 13.)

19 **B. Mandoyan Sues The County**

20 On August 13, 2018, Mandoyan filed a verified writ petition against the County in
21 Los Angeles Superior Court (*Mandoyan v. Los Angeles County Civil Service Commission*, Case
22 No. BS174714) challenging the Final Commission Action. (RJN Ex. 5.) On August 27, 2018,
23 Mandoyan also filed a complaint for damages against the County in Los Angeles Superior Court
24 (*Mandoyan v. County of Los Angeles*, Case No. BC719337), alleging various claims arising from
25 his hearing before the Commission. (*Id.* Ex. 6.)

26 **C. Villanueva Makes A “Priority Request” That Mandoyan Be Reinstated**

27 During Villanueva’s election campaign, in 2017-2018, Mandoyan served as Villanueva’s
28 personal driver and as a volunteer on his campaign for Sheriff. (*See* RJN Ex. 9 at p. 1.) The

1 election for Sheriff was held on November 6, 2018; Villanueva was declared the victor on
2 November 26, 2018 and was sworn in as Sheriff on Monday, December 3, 2018. (Declaration of
3 Louis R. Miller (“Miller Decl.”), Ex. A at 36:5-19.)

4 A week before he was sworn in, on November 26, 2018, Villanueva’s incoming chief of
5 staff, Lawrence Del Mese (“Del Mese”), asked the Chief of the Department’s Professional
6 Standards Division, Alicia Ault (“Ault”), to handle a “priority request” from Villanueva. (*Id.* at
7 33:7-34:9.) The “priority request” was to sign a settlement agreement that would lead to
8 Mandoyan’s reinstatement—*before* Villanueva took office. (*Id.* at AULT00043.) Del Mese stated
9 that Villanueva wanted it done under the Sheriff McDonnell regime and that it could not wait until
10 Monday, December 3. (*Id.* at 47:6-15, 48:6-12.) Ault testified that Del Mese—who told Ault he
11 was looking for her on an “org chart” while he spoke to her—was threatening her job status if she
12 did not do as Villanueva directed. (*Id.* at 33:12-34:9.)

13 That same day, November 26, Del Mese sent Ault a draft settlement agreement that
14 contemplated rescinding the Final Commission Action, changing the outcome of both the Final
15 Commission Action and a prior discipline case to “unfounded,” and awarding Mandoyan “full
16 back pay” and benefits. (*Id.* at AULT0001-4.) Ault was listed as the signatory on behalf of the
17 Department. (*Id.* at AULT00004.)

18 Ault believed that this request was not only unprecedented, but also illegal and unethical.
19 (*Id.* at 31:10-22, 46:9-15.) Ault, who had joined the Department as a Deputy Sheriff in 1984 and
20 rose through the ranks to Division Chief, knew that reinstating a terminated employee and
21 rewriting his employment history by erasing past discipline from his record would be wrong, and
22 inconsistent with the Department’s professional standards. (*Id.* at 31:16-22; 33:7-34:9.) She
23 crossed her name out on the draft settlement agreement, went home and decided to retire and leave
24 the Department. (*Id.* at 31:10-12, AULT00004.) Ault’s last day at work with the Department was
25 Friday, November 30, 2018. (*Id.* at AULT00043.)

26 On December 3, 2018, Villanueva was sworn in as Sheriff. During the first weeks of
27 Villanueva’s administration, Villanueva’s command staff and his new second-in-command, Ray
28 Leyva (“Leyva”), told Villanueva that he could not reinstate Mandoyan, who had been terminated

1 from County service over two years earlier. (*Id.*, Ex. B at 33:8-19, 34:12-16, 38:11-17.)

2 Leyva further explained that Mandoyan could not be brought back by a “Truth and
3 Reconciliation Panel” because no such panel existed. (*Id.* at 36:2-37:2.) Leyva told Villanueva he
4 would need buy-in from the Office of Inspector General and the Civilian Oversight Commission.
5 (*Id.* at 37:10-22.) Leyva explained that Villanueva would need this input because the panel would
6 be changing the entire disciplinary process for the Department. (*Id.* at 37:61-17.)

7 **D. Despite The Final Commission Action, Villanueva “Reinstates” Mandoyan**

8 On December 28, 2018, Villanueva authorized the Department to enter into a settlement
9 agreement with Mandoyan (the “Settlement Agreement”). (*See* RJN Ex. 7; *see also* Declaration of
10 Mary Wickham (“Wickham Decl.”) Ex. A.) He did this without informing the Board of
11 Supervisors or County Counsel.

12 Like the draft settlement agreement presented to Ault earlier, the Settlement Agreement
13 purported to void the Final Commission Action, reinstate Mandoyan as a Deputy Sheriff and
14 award Mandoyan over \$200,000 of back pay. (*Id.*; Miller Decl., Ex. A at AULT00001-4.) The
15 Settlement Agreement rewrote Mandoyan’s disciplinary record by changing the findings to either
16 “unresolved” or “unfounded.” (Wickham Decl., Ex. A ¶¶ 2–8.)

17 On February 5, 2019, the Department of Auditor-Controller (“Auditor-Controller”) (which
18 is responsible for overseeing all County expenditures, including employee compensation) received
19 a request from the Department to pay Mandoyan back pay for the period from September 26, 2016
20 through December 27, 2018, as set forth in the Settlement Agreement. (Declaration of John
21 Naimo (“Naimo Decl.”) ¶ 2.) The Auditor-Controller alerted the Office of County Counsel of the
22 Department’s request because the Settlement Agreement did not contain an approval signature by
23 County Counsel, which is the normal practice. (*Id.* ¶ 3.)

24 The Office of County Counsel and the Director of Personnel did not approve the
25 Settlement Agreement or the reinstatement of Mandoyan. (Wickham Decl. ¶ 3; Declaration of
26 Lisa M. Garrett (“Garrett Decl.”) ¶ 6.) The request to reinstate Mandoyan, restore his benefits and
27 award him back pay—absent documentation accompanied by County Counsel’s signoff—was
28 unprecedented. (Miller Decl., Ex. C at 72:3-12.)

E. The County Attempts To Enforce The Final Commission Action

On February 20, 2019, the County told Villanueva that County Counsel has exclusive authority over civil actions involving the County and that, as a result, the Settlement Agreement was void. (Naimo Decl. Ex. B at p. 2.) The County also told Villanueva that Mandoyan's discharge remained in effect and that all salary and other payments were being ended effective February 22, 2019; the County asked him to inform Mandoyan. (*Id.*) Villanueva refused. (*Id.*)

On February 28, 2019, the County wrote directly to Mandoyan. (*Id.* ¶ 4.) The County notified Mandoyan that the Settlement Agreement was void, that his reinstatement was unlawful, and that the Final Commission Action remained in full force and effect. (*Id.* Ex. B.) The County's letter also informed Mandoyan that all salary and other payments had been ended, and requested that he immediately return all County property. (*Id.*)

III. LEGAL STANDARD

A preliminary injunction is proper where: "(1) the party seeking the injunction is likely to prevail on the merits at trial, and (2) the 'interim harm' to that party if an injunction is denied is greater than 'the [interim] harm the [opposing party] is likely to suffer if the . . . injunction is issued.'" *Integrated Dynamic Sols., Inc. v. VitaVet Labs, Inc.*, 6 Cal. App. 5th 1178, 1183 (2016) (alteration in original) (citation omitted); Cal. Civ. Proc. Code § 527(a). The two factors are assessed on a sliding scale; greater likelihood of success on the merits results in a lesser burden on the irreparable harm prong. *Integrated Dynamic Sols.*, 6 Cal. App. 5th at 1183.

IV. THE COUNTY IS LIKELY TO PREVAIL ON THE MERITS**A. The County Will Prevail On Its Claim For Declaratory Relief That The Settlement Agreement Is Void****1. County Counsel Did Not Approve The Settlement**

Government Code section 23005 mandates that counties may exercise their powers only through the Board of Supervisors. Accordingly, the Board of Supervisors has oversight authority over all County officers. Cal. Gov't Code § 25303.

With respect to litigation, the Government Code states that the Board of Supervisors shall "direct and control the conduct of litigation in which the county, or any public entity of which the

1 board is the governing body, is a party.” Cal. Gov’t Code § 25203. County Counsel is then vested
2 with “*exclusive charge and control of all civil actions and proceedings in which the County or any*
3 *officer thereof, is concerned or is a party.*” Los Angeles County Charter art. VI, § 21.

4 Similarly, the County Code requires that any settlement agreement involving the County or
5 one of its officers must be authorized by the County Counsel. Los Angeles County Code ch. 2.14,
6 § 2.14.020. Where that settlement would require the expenditure of \$20,000 or more, it must also
7 be approved by the Board of Supervisors. *Id.*

8 In contrast, no statute grants the Sheriff authority to control litigation or enter into
9 settlement agreements on behalf of the County. *See G.L. Mezzetta, Inc. v. City of American*
10 *Canyon*, 78 Cal. App. 4th 1087, 1093-94 (2000) (“[B]ecause the statutes in question specifically
11 set forth the ways in which the City may enter into contracts, any other methods of contract
12 formation—even though not explicitly prohibited by the statutes—are invalid.”).

13 Where the law dictates the terms by which a public entity may enter into a contract,
14 contracts violating those terms are void as a matter of law. Cal. Gov’t Code § 23006; *see S.F. Int’l*
15 *Yachting Ctr. Dev. Grp. v. City & County of San Francisco*, 9 Cal. App. 4th 672, 683-84 (1992)
16 (city is bound only by contracts executed in accordance with charter provisions). Put simply,
17 “contracts that disregard applicable code provisions are beyond the power of the [public entity] to
18 make.” *Katsura v. City of San Buenaventura*, 155 Cal. App. 4th 104, 110 (2007).

19 Accordingly, any settlement agreement that purports to settle litigation involving the
20 County, but which is not approved by County Counsel and/or the Board of Supervisors, is
21 “‘wholly void,’ ultra vires, and unenforceable.” *G.L. Mezzetta*, 78 Cal. App. 4th at 1092 (citation
22 omitted); *People ex rel. Harris v. Rizzo*, 214 Cal. App. 4th 921, 941 (2013) (holding that an
23 employment agreement authorized by the City’s Chief Administrative Officer, where he had no
24 authority to make such a contract, was void).

25 In order to constitute a valid contract, the Settlement Agreement would need to have
26 County Counsel or Board of Supervisors approval. Los Angeles County Charter art. VI, § 21. It
27 had neither. (Wickham Decl. Ex. A.) Instead, the Settlement Agreement was executed by the
28 Chief of the Department’s Central Patrol Division—at Villanueva’s direction. (*Id.*) It is void.

1 **2. Estoppel And Waiver Cannot Be Used To Enforce A Void Contract**

2 Mandoyan has argued that the Settlement Agreement must be enforced because he relied
3 on the “ostensible authority of the Sheriff,” and “the County should be estopped from terminating
4 his employment.” (Mandoyan Opp’n at 7:8-17.) But under the law, estoppel, waiver and
5 ostensible authority cannot bind the County to a void contract.

6 First, a government employee cannot bind a government entity where he acts in excess of
7 his authority. *See Katsura*, 155 Cal. App. 4th at 109. Second, equitable estoppel “cannot be
8 applied against a governmental entity.” *Moore v. State Bd. of Control*, 112 Cal. App. 4th 371, 385
9 (2003); *S.F. Int’l Yachting Ctr. Dev. Grp.*, 9 Cal. App. 4th at 683-84 (“When a municipal charter
10 contains an express limitation on the manner in which a city may contract, the city is bound only
11 by contracts executed in accord with the charter provision. When there has been no compliance
12 with the relevant charter provision, the city may not be liable in quasi-contract and will not be
13 estopped to deny the validity of the contract.”).

14 Moreover, estoppel cannot apply here *even if* Mandoyan actually believed that the Sheriff
15 had authority to bind the County because “[o]ne who deals with the public officer stands
16 presumptively charged with a full knowledge of that officer’s powers, and is bound at his [or her]
17 peril to ascertain the extent of his [or her] powers to bind the government for which he [or she] is
18 an officer.” *Burchett v. City of Newport Beach*, 33 Cal. App. 4th 1472, 1479 (1995).

19 **B. The County Will Prevail On Its Claim For Declaratory Relief That**
20 **Mandoyan’s Reinstatement Was Unlawful**

21 **1. The Panel’s Reinstatement Of Mandoyan Was A Sham**

22 In opposition to the County’s application for a temporary restraining order, Villanueva and
23 Mandoyan both relied on the findings of a “Truth and Reconciliation Panel” that purportedly
24 convened on December 21, 2018. (*See Villanueva Opp’n* at 4:22-23, 5:5-16, 9:16; *Mandoyan*
25 *Opp’n* at 2:9-26, 5:12-20, 6:1-11.) This explanation fails for two reasons: (1) the decision to
26 reinstate Mandoyan was made before a “Panel” ever convened; and (2) the Sheriff has no
27 authority to overturn the Final Commission Action by establishing his own ad hoc panel.

28 The timing of Mandoyan’s “reinstatement” is as follows:

- November 26, 2018: Del Mese puts in a “priority request” to Ault to execute a settlement agreement to bring Mandoyan back to the Department. (Miller Decl., Ex. A at AULT00043.)
- November 30, 2018: Ault, who resigned after learning of this request, returns the unsigned settlement agreement to Del Mese on her last day of work. (*Id.*)
- December 3, 2018: Villanueva is sworn in.
- Early December: Villanueva meets with his staff, who advise him that he cannot bring Mandoyan back. (*Id.*, Ex. B at 33:8-19, 34:12-16, 36:2-37:2, 38:11-17.)
- December 27, 2018: A “Truth and Reconciliation Panel” memorandum is submitted to Villanueva. Panel members include Assistant Sheriff Timothy Murakami, Chief Eliezer Vera, and Chief Steven Gross. (Mandoyan Decl., Ex. 1.)
- December 28, 2018: The Settlement Agreement is executed. (*Id.* Ex. 2.)

The reinstatement was preordained. This is why the Settlement Agreement itself makes no mention of a “Truth and Reconciliation Panel.” (Wickham Decl. Ex. A.) It is simply an updated version of the agreement that was sent to Ault over a month *before* the Panel’s purported reinstatement. (*Id.*, Ex. B.) The Panel is an afterthought, a front for Villanueva and a sham.

2. The Sheriff Has No Authority To Reinstate Mandoyan Via A “Truth And Reconciliation Panel”

The Sheriff’s powers and duties are defined in the Government Code. *See Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 796 (1988) (Sheriff’s duties “are specified in great detail in a large body of statutory law”); Cal. Gov’t Code §§ 26600-26778. These provisions authorize the Sheriff to investigate public offenses, make arrests and maintain control over county jails. Cal. Gov’t Code §§ 26601, 26602, 26605; *see also* Cal. Penal Code § 4000. Because the Sheriff’s duties are specifically enumerated, the Sheriff has only such powers as have been conferred by law, expressly or by implication. *Beck*, 204 Cal. App. 3d at 447–48.

No statute grants the Sheriff authority to create an adjudicative commission. The Sheriff has previously asserted that he has authority to establish and operate the “Truth and Reconciliation Panel” through his power to “investigate public offenses.” Cal. Gov’t Code § 26602. But a sheriff’s investigative authority has been defined as the authority to gather evidence relating to criminal offenses, such as conducting searches and seizing evidence (*see Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 830 (2004)); interviewing witnesses and suspects (*see People v. Fuiava*,

53 Cal. 4th 622, 645 (2012)); and reviewing potential exculpatory evidence (*see Brewster v. Shasta County*, 275 F.3d 803, 805 (9th Cir. 2001)). A sheriff's investigative authority is not a basis to overturn prior disciplinary findings.

There is no law that allows the Sheriff to unilaterally overturn a final decision of the Civil Service Commission. Any attempt by the Sheriff to do so would be, and is, *ultra vires* and void. *See Burchett*, 33 Cal. App. 4th at 1479; *see also County of Kern v. Sparks*, 149 Cal. App. 4th 11, 16-17 (2007) (unilateral pay raise granted by the Sheriff was ineffective where it was up to the Board of Supervisors, not the Sheriff, to determine compensation). Accordingly, the Sheriff was without authority to create the "Truth and Reconciliation Panel" to overturn Civil Service Commission decisions, as here.

3. The Sheriff Had No Authority To Reinstate, Or Rehire, Mandoyan

(a) Mandoyan Was Discharged In Accordance With The Civil Service Rules

Public employee disciplinary decisions may be conducted only through the means authorized by statute. *See Conti v. Bd. of Civil Serv. Comm'rs*, 1 Cal. 3d 351, 365 (1969) (public employee reinstatement was void where city charter required a written finding of fitness, but the finding was oral or implied). Accordingly, disciplinary decisions made contrary to statutory requirements are void. *Redding v. City of Los Angeles*, 81 Cal. App. 2d 888, 896 (1947) (holding that the Chief of Police was "without authority" to reinstate a police officer whose termination had been upheld by an administrative body tasked with reviewing disciplinary charges against Los Angeles police officers).

In Los Angeles County, there is a formal civil service system. Los Angeles County Charter art. IX, § 33. The County Charter vests the Civil Service Commission with authority to hear appeals from disciplined County employees. *Id.* §§ 34, 35(6); Los Angeles County Civil Service Comm'n R. 4.01². Any County employee disciplined by discharge, reduction or

² The Civil Service Rules "have the force and effect of law." Los Angeles County Civil Service Comm'n R. 1.01.

1 suspension of more than five days is entitled to a hearing before the Civil Service Commission.
2 Los Angeles County Civil Service Comm’n R. 18.01-18.03.

3 The Civil Service Rules further confirm that the Civil Service Commission exercises an
4 “exclusive right . . . to discipline and discharge employees.” Los Angeles County Civil Service
5 Comm’n R. 1.02 (emphasis added); *see Kolender v. San Diego Cty. Civil Serv. Comm’n*, 132 Cal.
6 App. 4th 1150, 1157 (2005) (the Government Code places “ultimate authority with respect to
7 punitive action” with civil service commissions). Mandoyan was discharged in accordance with
8 the Civil Service Rules. (*See* Castellanos Decl. Ex. A at pp. 2–18; RJN Ex. 5, ¶¶ 9-12.)

9 (b) **Mandoyan’s Discharge Was Final**

10 County law provides that there is only one way a final decision of the Civil Service
11 Commission may be overturned—through a petition for writ of mandate under Code of Civil
12 Procedure section 1094.6. Los Angeles County Civil Service Comm’n R. 4.14.

13 Case law is in accord: *Swartzendruber v. City of San Diego*, 3 Cal. App. 4th 896, 903
14 (1992) (“It is well established that mandamus proceedings are the proper avenue for contesting
15 decisions regarding public employee discipline.”); *City of Santee v. Superior Court*, 228 Cal. App.
16 3d 713, 718 (1991) (“[A] proceeding under Code of Civil Procedure section 1094.5 is the
17 exclusive remedy for judicial review of the quasi-adjudicatory administrative action of the local-
18 level agency.”); *Boren v. State Pers. Bd.*, 37 Cal. 2d 634, 637 (1951) (accord).

19 Once the termination of a discharged public employee has been upheld by the
20 administrative agency, it is beyond the authority of another forum to overturn that decision (other
21 than through mandamus). *Briggs v. City of Rolling Hills Estates*, 40 Cal. App. 4th 637, 646-47
22 (1995). This principle “is a form of res judicata, of giving collateral estoppel effect to the
23 administrative agency’s decision, because that decision has achieved finality due to the aggrieved
24 party’s failure to pursue the exclusive *judicial* remedy for reviewing administrative action.” *Id.* at
25 646; *see Miller v. County of Santa Cruz*, 39 F.3d 1030, 1034-35 (9th Cir. 1994) (former deputy
26 collaterally estopped from relitigating the issue of his termination after not pursuing a writ of
27 mandate as to the civil service commission decision upholding his termination). Even the Civil
28 Service Commission itself is barred from overturning its own final decisions. *See Talmo v. Civil*

1 *Service Commission*, 231 Cal. App. 3d 210, 218 (1991) (citing *Heap v. City of Los Angeles*, 6 Cal.
2 2d 405, 407 (1936)). The finality of Civil Service Commission actions is “necessary to accord
3 recognition to the ‘expertise’ of the quasi-judicial tribunal and to promote judicial efficiency.”
4 *City of Fresno v. Superior Court*, 188 Cal. App. 3d 1484, 1493 (1987).

5 In sum, a decision of the Civil Service Commission is a final, binding action. In the
6 County, an employee has 90 days to challenge a final Civil Service Commission decision by filing
7 a petition for writ of mandate. Los Angeles County Civil Service Comm’n R. 4.14. If no timely
8 writ petition is filed, then the Civil Service Commission decision is conclusive. *See*
9 *Swartzendruber*, 3 Cal. App. 4th at 908.

10 (c) **Civil Service Rule 17 Prohibits Mandoyan’s “Reinstatement”**

11 In Los Angeles County, Civil Service Rule 17.01.A sets forth the conditions for
12 reinstatement after separation from County service:

13 After approval by the director of personnel, any person who has been separated from
14 county service without fault or delinquency may be reinstated by the appointing power
within two years from the date of such separation

15 Accordingly, a former employee can be reinstated after separation from the County *only* in
16 limited circumstances: if the reinstatement has the approval of the Director of Personnel, the
17 reinstatement is within two years of separation, and the underlying separation from the County was
18 “without fault or delinquency.” Los Angeles County Civil Service Comm’n R. 17.01.A.

19 Reinstatements are void where purportedly effected by an officer not granted reinstatement
20 authority by statute. *Redding*, 81 Cal. App. 2d at 896; *Varela v. Bd. of Police Comm’rs*, 107 Cal.
21 App. 2d 816, 819 (1951) (reinstatement of a police officer by the Police Commission was
22 “ineffectual” because the city charter “does not invest the Police Commission with the power to
23 reinstate members of the department who have been laid off, suspended or discharged. That
24 power is vested exclusively in Boards of Rights.”); *Hoertkorn v. Sullivan*, 67 Cal. App. 2d 151,
25 154 (1944) (the San Francisco Police Commission could not reinstate former police officers
26 because the city charter did not expressly empower it to reinstate discharged officers).

27 Mandoyan’s reinstatement did not meet any of the conditions of Civil Service Rule
28 17.01.A: (1) he had been terminated for fault (for his abuse, harassment, stalking and dishonesty)

(Garrett Decl. ¶ 7); (2) he was terminated on September 14, 2016, more than two years before his supposed reinstatement on December 28, 2018 (*id.* ¶ 5); and (3) the County’s Director of Personnel did not approve his reinstatement (*id.* ¶ 6). Mandoyan himself concedes that Civil Service Rule 17.01.A precludes his “reinstatement”: “However, this provision only applies to those employees that were separated ‘without fault of [sic] delinquency,’ and this is not the case here. Respondent Mandoyan was allegedly terminated for cause.” (Mandoyan Opp’n at 7:1-3.)

(d) **Under Civil Service Rules, Mandoyan Was Not “Rehired”**

The paperwork submitted to the Auditor-Controller describes Mandoyan’s return to service, with back pay, as a reinstatement. (*See* Naimo Decl. Ex. A at 5 & 11 (“Please amend your records to reflect this reinstatement.”); Mandoyan Decl. Ex. 4 (“I am requesting approval to reinstate Deputy Carl Mandoyan”). On one form, Department staff coded Mandoyan’s return to work a “rehire”—because there was no other way on the form to address the matter. (Declaration of Esmeralda Ramirez (“Ramirez Decl.”) Ex. 1.) Villanueva relied on this at the TRO hearing, despite otherwise characterizing Mandoyan’s return as a reinstatement. (*Compare* Villanueva Opp’n at 8:26 with *id.* at 9:3.) But the form stating “rehire” is not—and cannot be—determinative. By law, Mandoyan’s reinstatement could not be a “rehire,” because he did not comply with the Civil Service Rules.

The Los Angeles County Department of Human Resources has specific rules for bringing either new or former employees into County service. (Supplemental Declaration of Lisa Garrett (“Supp. Garrett Decl.”), ¶¶ 7-15 & Ex. A.) A formerly discharged employee could be classified as a “rehire” only if the Department’s decision to discharge that employee was overturned by either the Civil Service Commission or a court. (Supp. Garrett Decl. ¶ 10.) That is why the paperwork that the Department prepared at Villanueva’s direction includes the phrase “overturned discharge.” (*See* Naimo Decl. Ex. A at 13, 14, 16.) But Mandoyan’s discharge was *not* overturned by the Civil Service Commission or a court. (Supp. Garrett Decl. ¶ 11.)

Where a discharged deputy does not meet the criteria for reinstatement, or rehire through overturned discharge, his only option is to apply through the regular process, *i.e.*, by applying to be placed on the civil service eligibility list. *See Redding*, 81 Cal. App. 2d at 896 (“[A]ppellant

1 having by due process of law forfeited his right to be on the police force, the chief of police is
2 without authority to restore him. In order for him to regain membership in that organization he
3 must pursue the route followed by any citizen who seeks to become a police officer.”); *see*
4 *Holmgren v. County of Los Angeles*, 159 Cal. App. 4th 593, 602 (2008) (“The *only* way to become
5 a Los Angeles County civil service employee is through compliance with the procedures set out in
6 the County’s Civil Service Rules.”).

7 While the County Charter grants authority to the Sherriff to appoint deputies to his
8 Department (Article XII, Section 51), that same Charter section also specifies that deputies must
9 be appointed “from the eligible civil service list” (*id.*). The Civil Service Rules vest the County
10 with the exclusive right “to hire or rehire” and “to determine the methods, means and personnel by
11 which the county’s operations are to be conducted.” Los Angeles County Civil Service Comm’n
12 R. 1.02. The Civil Service Rules state that civil service eligibility lists are assembled and certified
13 by the County’s Director of Personnel (*not* the Sheriff). *Id.* 11.01.

14 Accordingly, the Sheriff may hire only those candidates on the eligibility list assembled by
15 the County Director of Personnel. (Supp. Garrett Decl. ¶ 12.) These eligibility lists have a
16 duration of one year. Los Angeles County Civil Service Comm’n R. 10.06. Mandoyan was
17 reinstated and awarded back pay without ever completing the rehire process or being placed on an
18 eligible civil service list. (Supp. Garrett Decl. ¶ 13.) Moreover, Mandoyan’s reinstatement did
19 not conform with the Department’s own hiring guidelines, which set forth a rigorous application,
20 screening and hiring process for both new hires and laterals. (*Id.* ¶ 14.)

21 **C. The County Will Prevail On Its Writ Claim**

22 **1. Duty To Comply With The Final Commission Action**

23 The Civil Service Rules have the force and effect of law. Los Angeles County Civil
24 Service Comm’n R. 1.01. Under Civil Service Rule 4.14, a Civil Service Commission’s final
25 action is binding and can be overturned only by way of writ of mandate. *See supra* IV.B.3(b).

26 Here, because the Final Commission Action was never overturned, Mandoyan remains a
27 discharged former employee. As such, Respondents have a ministerial duty to comply with the
28 Final Commission Action. *See Hudson v. County of Los Angeles*, 232 Cal. App. 4th 392, 409

(2014) (recognizing ministerial duty to comply with Civil Service Commission order).

2. Duty To Return County Property

Respondents also have a ministerial duty to collect County property from all former employees. The County Code requires any employee who severs his connection with the department to return his weapon, badge and uniform. Los Angeles County Code ch. 5.64, §§ 5.64.180.A & 5.64.290.A; *id.* ch. 5.72, § 5.72.040.

Section 3-01/040.20 of the Department's own Manual of Policy and Procedures also requires a separated Deputy Sheriff to return County-issued weapons, badges and uniforms; and section 3-01/040.40 of the Manual prohibits the misappropriation of County property.

D. The Irreparable Harm To The County And The Public

The balance of harms here weighs in favor of the County because Mandoyan's holding himself out as a Deputy Sheriff exposes the County to liability and threatens public trust in law enforcement. California law recognizes the significance and impact of a peace officer's uniform, gun and badge by prohibiting the impersonation of peace officers. Cal. Penal Code § 538d.

Allowing Mandoyan to hold himself out as a Deputy Sheriff, despite knowing that the County does not recognize him as an employee, could have serious consequences, and potential liability, for the County. Leyva explained this to Villanueva, and urged him to collect Mandoyan's badge and gun. (Miller Decl., Ex. B at 58:3-7.) Villanueva ignored this advice.

In contrast, issuing a preliminary injunction will not harm Respondents because they have been on notice for months now that Mandoyan is not a County employee and is not entitled to use or possess County property. Mandoyan cannot be harmed by the loss of a job he is not entitled to have in the first place. He can, and should, find another job.

V. CONCLUSION

For the foregoing reasons, the County respectfully requests that the Court issue a preliminary injunction requiring that: (1) Mandoyan cease to hold himself out as a Deputy Sheriff; (2) Mandoyan relinquish all County property in his possession, including any Department-issued uniform, badge and weapon; and (3) Villanueva and the Department cease to recognize or hold Mandoyan out as a Deputy Sheriff or a County employee.

MILLER BARONDESS, LLP

ATTORNEYS AT LAW
1999 AVENUE OF THE STARS, SUITE 1000 LOS ANGELES, CALIFORNIA 90067
TEL: (310) 552-4400 FAX: (310) 552-8400

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Respectfully submitted,

MILLER BARONDESS, LLP

By:



LOUIS R. MILLER
Attorneys for Petitioner/Plaintiff
COUNTY OF LOS ANGELES